

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK MACK MCCLOUD,

Plaintiff,

v.

PIERCE COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendants.

CASE NO. C16-5098 BHS-DWC

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation ("R&R") of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 62), and Plaintiff's objections to the R&R (Dkt. 63).

Mark Mack McCloud ("Plaintiff") is a pre-trial detainee at the Pierce County Jail (the "Jail"). He alleges his rights were violated when Defendant Allen O'Neill ("O'Neill"), a Pierce County Sheriff's Deputy, assaulted him and then refused to provide medical care after the assault. Dkt. 49.

On August 25, 2016, Plaintiff filed a motion for summary judgment. Dkt. 55. To support the motion, Plaintiff submitted a personal declaration and portions of relevant

1 records. Dkts. 55-1, 55-2. Judge Christel also considered Plaintiff's amended complaint
2 as evidence. Dkt. 62 at 2. On September 12, 2016, Defendants responded. Dkts. 58, 60.
3 Defendants relied upon the declarations of Stephen Trinen and O'Neill, as well as other
4 relevant records, to oppose summary judgment. Dkts. 59, 59-1, 61. Plaintiff did not reply.
5 On September 23, 2016, Judge Christel recommended denying Plaintiff's motion for
6 summary judgment. Dkt. 62. On September 27, 2016, Plaintiff objected. Dkt. 63.

7 The district judge must determine de novo any part of the magistrate judge's
8 disposition to which a party properly objects. The district judge may accept, reject, or
9 modify the recommended disposition; receive further evidence; or return the matter to the
10 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

11 Plaintiff objects to the R&R on the basis that:

12 The investigative findings indicates defendant O'Neill approached
13 the plaintiff who was sitting on his bunk reading a magazine removed his
14 keys and sat them down on plaintiff's bunk after exchanging what appeared
to be challenging comments. This behavior could only serve to incite or
invite some type of action either by the inmate inmate of [sic] CD O'Neill.

15 Dkt. 63 at 4.

16 The R&R clearly sets forth two competing factual accounts supported by the
17 evidence before the Court. Dkt. 62 at 5–7. Those facts clearly indicate “a material issue
18 of disputed fact as to whether Defendant O'Neill's use of force was objectively
19 reasonable.” *Id.* at 8. Judge Christel properly construed the parties' competing factual
20 accounts in the light most favorable to O'Neill, the nonmoving party. *See* Dkt. 62 at 7–8
21 (citing *Furnace v. Sullivan*, 705 F.3d 1021, 1026 (9th Cir. 2013); *Torres v. City of*
22

1 *Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011); *Tarin v. County of Los Angeles*, 123 F.3d
2 1259, 1263 (9th Cir.1997)). Summary judgment was properly denied.

3 Accordingly, the Court having considered the R&R, Plaintiff's objections, and the
4 remaining record, does hereby find and order as follows:

5 (1) The R&R is **ADOPTED**; and

6 (2) Plaintiff's Motion for Summary Judgment (Dkt. 55) is **DENIED**.

7 Dated this 10th day of November, 2016.

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10 BENJAMIN H. SETTLE
United States District Judge